SUPREME COURT, U. S.
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In The
Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-965

MORAN SHIPPING COMPANY AND SULPHUR CARRIERS CORPORATION,

Petitioners,

vs.

MAURO EVARISTO BLANCO,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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In The
Supreme Court of the United States

OCTOBER TERM, 1973

No.

MORAN SHIPPING COMPANY AND SULPHUR CARRIERS CORPORATION,

Petitioners,

vs.

MAURO EVARISTO BLANCO,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Moran Shipping Company and Sulphur Carriers Corporation, Petitioners, pray that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled case on August 20, 1973.

CITATIONS TO OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Fifth Circuit, printed in Appendix "B" is not yet officially reported.

The Opinion of the United States Court of Appeals for the Fifth Circuit, denying the Petition for Rehearing and Petition for Rehearing En Banc, printed in Appendix "A" is not yet officially reported. The Opinion of the Judge of the United States District Court, Middle District of Florida, was not officially reported.

JURISDICTION

The Judgment and Opinion of the United States Court of Appeals for the Fifth Circuit was dated August 20, 1973.

The Petition for Rehearing and Petition for Rehearing En Banc was denied by the United States Court of Appeals for the Fifth Circuit on November 8, 1973. Pursuant to timely Motion by Petitioners, the United States Court of Appeals for the Fifth Circuit has stayed the mandate to and including December 27, 1973.

The jurisdiction of this Court is invoked pursuant to Title 28, Section 1254(1) USCA.

QUESTION PRESENTED

1. Whether a Venezuelan seaman alleged to be injured aboard his Liberian flag vessel and represented by two members of the Bar can execute a valid and binding Release of his rights.

2. Whether the Court of Appeals can constitutionally consider matters outside the record and reverse a District Judge based upon matters not of record or before either Court.

3. Whether it is justifiable and binding precedent today, to hold that a modern day seaman is a "Ward of the Court," when he has been represented by two members of the Bar at the time he executed a Release for personal injuries and the seaman presently attempts to set same aside.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The Fifth Amendment, United States Constitution.

2. The statute under which Respondent filed suit, although nothing turns on its terms, was 46 USCA §688, (Jones Act), which provides as follows:

Recovery for injury to or death of seaman

"Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located. Mar. 4, 1915, c. 153, § 20, 38 Stat. 1185; June 5, 1920, c. 250, § 33, 41 Stat. 1007."

STATEMENT OF THE CASE

Plaintiff served as a solderer and welder aboard the SS "POCHTECA". Plaintiff was a Venezuelan national and the vessel was one of Liberian registry. While aboard the vessel at Tampa, Florida during July, 1967 Plaintiff was injured. A period of hospitalization at Tampa ensued and after the hospitalization was concluded Plaintiff rejoined the vessel at Jacksonville, Florida.

At Jacksonville, Plaintiff retained a member of the Florida Bar, William C. Bostwick. Mr. Bostwick had been a member of the Florida Bar since February of 1952. Mr. Bostwick obtained a medical report from Tampa General Hospital physicians, Fernandez and Konnell. Further, Bostwick also obtained a report from Dr. Hook of Jacksonville reflecting that Plaintiff's "disability . . . is no longer present and . . . vision is again normal."

During September, 1967, Plaintiff left Florida to return to his country. Mr. Bostwick continued corresponding with Plaintiff and Plaintiff with his counsel. Further, Mr. Bostwick continued negotiations with Defendants' counsel and successfully secured posting of Bond therefrom. Negotiation resulted in a settlement of $1,000.00 being transmitted to Mr. Bostwick by the Defendants. Mr. Bostwick took two actions at that time. He had the file reviewed by another member of the Florida Bar in his office to confirm his opinion and further referred the matter to associated counsel, Victor Raymos, a member of the Florida Bar.

Victor Raymos, at times material, had been a member of the Florida Bar for twelve years. He was born in Cuba and was fluent in Spanish. He wrote to Plaintiff and received

letters from Plaintiff in Spanish. Mr. Raymos wrote to Plaintiff indicating that Mr. Bostwick had associated him in the case and that he, Mr. Raymos, had examined the file and that, considering all factors, the matter should be settled for $1,000.00.

Plaintiff corresponded to Mr. Raymos indicating that he would accept the $1,000.00 on the condition that the company, i.e., Defendants, would perform plastic surgery on his face. However, Mr. Raymos in a direct and forthright fashion wrote to Plaintiff on October 29, 1968 in Spanish and stated unequivocally that the $1,000.00 would be a complete settlement and that nothing further would be paid and there would be no operation. So that there would be no misunderstanding of his advices, Mr. Raymos indicated to Plaintiff to sign at the bottom of the letter, thereby accepting the terms of the letter, and instructed Plaintiff to return the letter to him so that he would be authorized to accept the settlement offer. Plaintiff returned the letter with the acceptance executed, mailing same from Caracas, Venezuela.

Thereafter, Mr. Raymos received the check from Defendants with the accompanying Releases. The Releases were submitted by Plaintiff's counsel to Honorable Morris B. Bernbaum, the Ambassador of the United States in Caracas, for execution. Plaintiff appeared at the American Embassy and the Embassy reported to Mr. Raymos that Plaintiff needed further assistance in executing the Release. In order to avoid any misunderstanding it was suggested to Mr. Blanco that he bring his own translator to the Embassy. Plaintiff in fact brought his own interpreter, Ramulo Moeller, and the Release was executed at the American Embassy before three witnesses, and in the presence of Plaintiff's own translator. The Release was certified to have been interpreted to Plain-

tiff by Plaintiff's own translator, the aforementioned Mr. Moeller.

The monies were thereupon forwarded to Plaintiff's counsel and thence to Plaintiff. The Plaintiff received the money.

From April, 1969 until November, 1971, the matter was dormant until suit was filed in the United States District Court.

In November, 1971, Plaintiff filed suit for injuries resulting from the July, 1967 accident. Plaintiff was represented by a member of the Florida Bar with a member of the New York Bar appearing of counsel. Suit was filed in the United States District Court in and for the Middle District of Florida, Jacksonville Division.

Among other defenses, Defendants alleged that Plaintiff had freely executed the aforementioned Release concerning the July, 1967 accident. Defendants further deposed the members of the Florida Bar who had represented Plaintiff throughout the settlement negotiations. At neither deposition was Plaintiff's present counsel in attendance.

Defendants moved for Summary Judgment and the Court granted same pursuant to its Order and Opinion of March 22, 1973. On that date, Judgment was entered in favor of Moran Shipping Company and Sulphur Carriers Corporation and the action dismissed on the merits (Appendix D).

The United States Court of Appeals for the Fifth Circuit reversed (Appendix B).

REASONS FOR GRANTING THE WRIT

A. A RELEASE EXECUTED BY A SEAMAN REPRESENTED BY TWO COMPETENT ATTORNEYS, WHERE THE SEAMAN AND ATTORNEYS ACT WITH LEGAL AND MEDICAL ADVICE CONSTITUTES A BINDING RELEASE AS A MATTER OF LAW.

The Ruling of the United States Court of Appeals for the Fifth Circuit effectively makes settling a seaman's case impossible. If representation by two competent counsel is not enough, indeed what must it take?

The test of *Garrett v. Moore*, 317 U.S. 239 (1942) is not achieving the impossible, but merely securing an assurance that the seaman has a "full understanding of his rights" and is not mistreated. The reason for the rule arose from the days of wood ships and hardships, where overreaching by the shipowner was most possible. The reason for the rule, set forth in *Garrett* was never to be interpreted so as to make good faith, fair handed negotiations impossible. But such an impossibility will result under the Opinion of the United States Court of Appeals for the Fifth Circuit.

The Opinion of the United States Court of Appeals for the Fifth Circuit is in conflict with fair and reasonable interpretations of seaman's rights, such as appears in *Gilbert v. United States of America*, 479 F.2d 1267 (2nd Cir., 1973). In that case, Plaintiff seaman, one Gilbert, attempted to set aside a settlement on the basis that same was not authorized. The United States Court of Appeals for the Second Circuit stated that where express authority is given, an attorney may compromise the matter and same is binding upon his principal. The trial court was affirmed.

The Respondent seaman herein was adequately and amply represented by two members of the Florida Bar during his settlement negotiations. The trial court had depositions of both counsel before the court in making the initial decision. The Respondent retained, in Jacksonville, counsel of twenty years experience and the court found him to be most competent. Since Respondent spoke Spanish and saw fit to return home to Venezuela, the Jacksonville counsel obtained additional counsel on behalf of Respondent and sought Spanish-speaking and Cuban-born counsel so as to better communicate and advise on the merits of Respondent's claim.

The matter for this Court to consider and the reason to grant this Writ is to determine whether or not a seaman's cause of action may be compromised. Must a vessel owner require to be included the direct communications between the seaman's attorneys and the client seaman? Must vessel owners allow each and every case to go to trial and result in Judgment by a court or jury before a matter is concluded?

Unless this Court rules on this matter the decision of the Fifth Circuit leads to confusion, misinterpretation, lack of uniformity and more litigation by seamen.

The decision of the United States Court of Appeals for the Fifth Circuit is in conflict with the case relied upon by the District Judge herein. In *Sitchon v. American Export Lines, Inc.*, 113 F.2d 830 (2d Cir., 1940), *cert. denied*, 311 U.S. 705 (1940) the United States Court of Appeals for the Second Circuit recognized that when a seaman executes a release and acts upon the advice of an attorney, the release should not be set aside. That Court in affirming a trial court's Summary Judgment held that a reasonable policy basis for this ruling was that "if such a settlement as the one in

the case at bar is voided, no release by a seaman could ever be free from attack, if he subsequently discovers that his injuries were greater than he had anticipated when executing the release".

A substantial period of time has elapsed since this Court has directed its attention to the question of seamen's releases. The lack of uniformity that will abound by the Fifth Circuit decision as well as the confusion that will result therefrom commend that the Court grant this Writ and fully review the decision of the United States Court of Appeals for the Fifth Circuit concerning this vital issue.

B. THE OPINION OF THE COURT OF APPEALS IS ERRONEOUS AND AT VARIANCE WITH THIS COURT'S DECISION IN THAT THE COURT UNCONSTITUTIONALLY CONSIDERED MATTERS OUTSIDE THE RECORD AND REVERSED THE DISTRICT JUDGE ON MATTERS NOT IN THE RECORD BEFORE EITHER COURT.

In the instant suit, the Plaintiff sued on theories of general maritime law, Jones Act and Liberian law (alleging in the Complaint that Liberian law was the same as American general maritime law). The United States Court of Appeals and its Opinion (Appendix "B") set forth what, to it, was a critical factor: The fact that Plaintiff had propounded Interrogatories concerning Liberian law and that same had not been answered. The record reflects that this is untrue. There were never any Interrogatories filed or served and therefore none that went unanswered. This basis for the decision made by the United States Court of Appeals and upon which their Opinion turns was never part of this case.

We respectfully suggest that if indeed justice be what is fair and what is truthful, then the decision of the United States Court of Appeals must be reversed.

This Court in *Thomson v. Gaskill*, 315 U.S. 442 (1942) stated that the review of a District Court's determination concerning jurisdictional amount *must* be confined to the record before the Court on appeal.

This past rule of law was not followed by the United States Court of Appeals for the Fifth Circuit.

In *New Haven Inclusion Cases*, 399 U.S. 392 (1970), the Supreme Court of the United States refused to consider matters that were not in the record as evidence.

The United States Court of Appeals refused to follow this recent rule of law.

In *Drake v. General Finance Corporation of Louisiana*, 119 F.2d 588 (5th Cir., 1941), the United States Court of Appeals held that the Court can consider nothing save what is stated in the record sent up from the trial court.

The United States Court of Appeals did not follow its own rule of law.

The constitutional protection afforded the Petitioners by the Fifth Amendment can certainly not be met when one considers the reliance by the United States Court of Appeals upon matters outside the record so as to vacate and remand a case to the District Judge concerning a release entered into with the advice of two competent attorneys.

C. THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT IS IMPROPER SINCE SEAMEN SHOULD BE AFFORDED NO FURTHER PROTECTION THAN ANY OTHER PERSON.

In days of Justice Story sitting on circuit in 1823 deciding the case of *Harden v. Gordon,* 2 Mason 541 (CC, 1823) Fed Case No. 6047, one can conjure up a most accurate mental picture of persons who were entitled to be "wards of the admiralty". In that day of wooden ships, sails, minimal education and lack of collective bargaining, certainly this was a category or class of persons who had no one to look to other than the courts or government as a protector. The status of a seaman before the world in general, and even the courts, was not an enviable one. For example, Dana, *Two Years Before the Mast* (1840) (Doubleday & Co., 1959), it was accurately stated at Page 353 in discussing the seaman's plight:

> "It is to be considered, also, that the sailor comes into court under very different circumstances from the master. He is thrown among landlords, and sharks of all descriptions; is often led to drink freely; and comes on the stand unaided, and under a certain cloud of suspicion as to his character and veracity."

Today, however, with the technical equipment aboard modern-day vessels has come technical persons possessing highly sophisticated skills and abilities. Their education unlike one hundred and fifty years ago, would exceed that of the "man on the street" who receives no special recognition or treatment as a "ward". In its decision of the instant case, the United States Court of Appeals for the Fifth Circuit,

failed to recognize this fact, thereby allowing the law of seamen and seamen's releases to remain static and antiquated.

Competent attorneys are readily available to seamen, as indeed they are to an increasing segment of the American community. Further, seamen are able to have the benefits of collective bargaining which have increased their well-being and standing in the community.

The traditional "ward of the admiralty" has mentally, intellectually and socially grown up, and he can no longer be considered a "ward". The law of this land should recognize that fact and the law applied in the instant case as to Petitioners and Respondent should be no different than any state law or appropriate federal law such as the Federal Employers' Liability Act, 45 USCA §51-60.

For this reason, we respectfully urge the Court to grant this Writ to review the law of seamen's releases and to modernize the law in this vital area of admiralty.

CONCLUSION

The United States Court of Appeals misinterpreted *Garrett, supra,* and entered its decision in conflict therewith and in conflict with other circuits. Further, the United States Court of Appeals improperly relied upon matters not in the record. Further, the matter of releases executed by seamen should be equally treated with other releases executed by non-seamen. For these reasons, a Writ of Certiorari should issue.

Respectfully submitted,

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Jacksonville, Florida 32202

By.....
JAMES F. MOSELEY
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to GERALD SOHN, ESQUIRE, Post Office Box 104, Jacksonville, Florida; THOMAS M. BREEN, ESQUIRE, 160 Broadway, New York, New York 10038; and upon CHARLES R. MALONEY, ESQUIRE, 822 Richards Building, New Orleans, Louisiana 70112, by United States Mail this ——— day of December, 1973.

.....

JAMES F. MOSELEY

Attorney for Petitioners,
Moran Shipping Company and
Sulphur Carriers Corporation

APPENDIX

APPENDIX "A"

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 73-2130

MAURO EVARISTO BLANCO,
Plaintiff-Appellant,

versus

MORAN SHIPPING COMPANY and
SULPHUR CARRIERS CORPORATION,
Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Florida

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ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

(Opinion Aug. 20, 1973, 5 Cir., 1973, ... F. 2d .....).

November 8, 1973)

Before WISDOM, AINSWORTH and CLARK,
Circuit Judges.

PER CURIAM: The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service

on the Court having requested that the Court be polled on rehearing en banc, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petition for Rehearing En Banc is DENIED.

APPENDIX "B"

IN THE
United States Court of Appeals
FOR THE FIFTH CIRCUIT

No. 73-2130
Summary Calendar*

MAURO EVARISTO BLANCO,
Plaintiff-Appellant,

versus

MORAN SHIPPING COMPANY and
SULPHUR CARRIERS CORPORATION,
Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Florida

---

(August 20, 1973)

Before WISDOM, AINSWORTH and CLARK,
Circuit Judges.

CLARK, Circuit Judge: Summary judgment at the hands of the district court, based upon an exceptionally strong written release of all claims ended this seaman's action by

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*Rule 18, 5th Cir.; see Isbell Enterprises, Inc. v. Citizens Casualty Co. of N.Y., 431 F.2d 409, Part I (5th Cir. 1970).

Blanco. The motion for summary judgment was based upon depositions by the attorneys who represented Blanco at the time he gave the release. Counter-affidavits were submitted by Blanco and by one of his present attorneys.

The issue is framed in the language of the classic test set out in *Garrett v. Moore-McCormick Company*, 317 U.S. 239, 248, 63 S.Ct. 246, 252, 87 L.Ed. 239, 245 (1942):

> . . . the burden is upon one who sets up a seaman's release to show that it was executed freely, without deception or coercion, and that it was made by the seaman with a full understanding of his rights. The adequacy of the consideration and the nature of the medical and legal advice available to the seaman at the time of signing the release are relevant to an appraisal of this understanding.

This circuit has paraphrased the *Garrett* test in this language:

> . . . the burden is on the party setting up the seaman's release to show that it was given by the seaman with an informed understanding of his rights and a full appreciation of the consequences of his release.

Cates v. United States, 451 F.2d 411, 414 (1971).

The shipboard accident giving rise to this action occurred on July 24, 1967 in Tampa, Florida waters and resulted in Blanco's hospitalization in Tampa General Hospital. Following his discharge from this hospital, Blanco went to Jacksonville, Florida where his ship was then in dry dock and came under the care of a doctor there. He subsequently was released from the ship and thereupon employed a Jacksonville attorney who spoke and understood only English. Blanco

spoke and understood only Spanish. To make communications more difficult, Blanco subsequently returned to his native Venezuela. When a settlement offer eventuated, Blanco's English-speaking attorney deposed:

> I wrote Mr. Blanco in April of 1968 that I needed to get a statement from him as to how his injuries were currently bothering him, what sums he owed for doctors and medicines, the number of times he has been treated by a physician since the first of February.
>
> I don't think I ever got any intelligent reply to that. Every letter I had was not responsive to it, but I believe about the time I associated Victor Ramos in the case and – I'm certain I did by October, 1968.
>
> I see one letter that is translated by Mr. Ramos. It says, and this is from Blanco – "as of this moment I have no report."

Victor Ramos, referred to in this testimony, is another Jacksonville attorney who was associated by Blanco's first counsel because of Ramos' literacy in both Spanish and English. The deposition given by Ramos similarly appears to have been based solely upon the medical reports covering the Tampa hospitalization or the Jacksonville doctor's treatment.

In his counter-affidavit, Blanco swears that he had accident-related plastic surgery at the University Hospital in Caracas, Venezuela in January, 1969 which was shortly prior to the consummation of the settlement. He further avers that when settlement was first advised by his then attorneys, he demurred because he needed additional surgery and did not

want to bear the expense himself. He also inconsistently declared under oath in the same affidavit that he did not understand the legal effect of the release and executed it because he thought it represented no more than a receipt for his wages aboard ship. The other counter-affidavit, by one of Blanco's present counsel, contends that Blanco may have a right of action under Liberian law because of the vessel's registry and an additional action under American law because the vessel might be a "flag of convenience vessel." The affidavit of counsel further swears that he must have the answers to previously filed but yet unanswered interrogatories to know whether Blanco possessed this additional potential claim at the time he was advised to settle – information which would go to the adequacy and efficacy of the legal advice he then received.

The district court utilized the correct legal test from *Garrett*. The applying it to the facts the court found that there was no genuine issue as to Blanco's understanding of the nature and legal effect of the release that he executed or as to the fact that Blanco had intimate knowledge of the various medical procedures which had been performed on his own face. The court also found Blanco had been afforded "adequate legal advice." The problem lies in this latter finding. The depositions of counsel show that their advice to Blanco was given without knowledge of his Venezuelan surgery. Counsel Ramos described the medical report he examined as "very mild." The last report referred to by Blanco's English-speaking counsel was dated September 7, 1967. Obviously if counsel were not aware of the subsequent surgical procedures and their costs and sequelae or any prognosis for further surgery, they were in no position to advise their client as to the adequacy of the proposed settlement. There similarly remains unresolved at this point in this cause the

legal status of any dual Liberian-American claim Blanco may be able to assert, it is simply unknown whether either counsel was aware of such potential claim or took it into account in arriving at their evaluation.

Giving Blanco the benefit of all reasonable doubts in determining whether a genuine issue of material fact exists [*see* C. Wright, Federal Courts 443 (2d ed. 1970)] we must say on the basis of this summary judgment record that such an issue remains and must be tried. Without the slightest intent of intimating any decision on the merits, we vacate the summary judgment entered herein and remand this cause for further proceedings not inconsistent with this opinion.

VACATED and REMANDED.

APPENDIX "C"

United States Court of Appeals
FOR THE FIFTH CIRCUIT

October Term, 1972

No. 73-2130
Summary Calendar

D. C. Docket No. CA 71-944-J-S

MAURO EVARISTO BLANCO,
Plaintiff-Appellant,

versus

MORAN SHIPPING COMPANY and
SULPHUR CARRIERS CORPORATION,
Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Florida

Before WISDOM, AINSWORTH and CLARK,
Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was taken under submission by the Court upon the record and briefs on file, pursuant to Rule 18;

ON CONSIDERATION WHEREOF, It is now here or-

dered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, vacated; and that this cause be, and the same is hereby remanded to the said District Court in accordance with the opinion of this Court;

It is further ordered that defendants-appellees pay to plaintiiff-appellant the costs on appeal to be taxed by the Clerk of this Court.

August 20, 1973

Issued as Mandate:

APPENDIX "D"

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

No. 71-944-Civ-J-S

MAURO EVARISTO BLANCO,
Plaintiff,

v.

MORAN SHIPPING COMPANY and
SULPHUR CARRIERS CORPORATION,
Defendants.

Filed Ocala, Florida March 22, 1973

ORDER AND OPINION

Plaintiff, a merchant seaman, seeks damages pursuant to the Merchant Marine (Jones) Act, 46 U.S.C. § 688, for personal injuries suffered in the course of his employment. The defendants move for a final summary judgment on the basis of an accord and satisfaction in the nature of a full release executed by the parties.

Plaintiff was injured on June 24, 1967, while attempting to unclog certain sulphur pipes aboard the SS POCHTECA on which he was employed as a solderer and welder. The sulphur was emitted from the valves and burned the plain-

tiff's face and eyes. The same day he was admitted, at the Moran Shipping Company's expense, to Tampa General Hospital where he remained an inpatient for 15 days. The diagnosis was second degree burns of the face, eyelids, conjunctiva and cornea. The doctor's prognosis was that the plaintiff would "do very well as far as his eyes are concerned."

The Moran Shipping Company then sent the plaintiff to another doctor in Jacksonville for further treatment. After plaintiff's discharge from employment, he returned to Venezuela where plastic surgery was done on his face. Plaintiff claims that he still suffers from pains in his eyes and headaches and that he needs additional plastic surgery.

The plaintiff executed releases for the amount of $1,000.00 when he was in Venezuela. These plenary releases form the basis for the defendants' motion for summary judgment. The plaintiff's response to this motion is that the said releases were not valid and therefore without legal effect. The plaintiff bases his conclusion on his contention the release was not fair and was not based on competent medical and legal advice as is required by the leading case of *Garrett v. Moore-McCormack Co.*, 317 U. S. 239 (1942). That case held that "the burden is on the one who sets up a seaman's release to show that it was executed freely, without deception or coercion, and that it was made by the seaman with a full understanding of his rights. The adequacy of the consideration and the nature of the medical and legal advice available to the seaman at the time of signing the release are relevant to an appraisal of this understanding." *Id.* at 248.

That the plaintiiff was afforded adequate legal advice is supported by the depositions of the two attorneys, Mr. William C. Bostwick and Mr. Victor Ramos, who advised the

plaintiff in his negotiations with the defendants prior to the execution of the releases. The plaintiff initially solicited the legal advice of Mr. Bostwick concerning his rights in regard to his injuries. Mr. Bostwick filed a libel on the plaintiff's behalf in this Court in 1967, No. 67-626-Civ-J. In order to avoid any misunderstanding due to the language barrier, Mr. Bostwick associated Mr. Victor Raymos, a Cuban-born attorney, who wrote and spoke both Spanish and English fluently. Both of these attorneys, who were admittedly able and experienced members of The Florida Bar, advised the plaintiff to accept $1,000.00 as "a good settlement" considering certain factors: the cost of having Mr. Blanco come to Florida to attend trial and his expenses during the trial and on the legal opinion of these two lawyers that there was no guarantee that a jury would award him more than $1,000.00.

Mr. Raymos deposed that the release was executed in the presence of the United States Ambassador to Venezuela, witnesses, a notary public, an interpreter and Mr. Blanco's own interpreter. This was not controverted by any of the affidavits submitted by the plaintiff.

The plaintiff's contention that he did not understand the legal nature and effect of the release is contradicted by the plaintiff's own affidavit which states that he initially would not sign the release because he thought he needed plastic surgery. After Mr. Raymos advised him that the company would not pay for the plastic surgery he decided to sign it anyway. If Mr. Blanco did not understand that he was relinquishing all of his rights against the company he would not have attached such a condition to the execution of the release in the first place. Therefore, this Court holds that there is no genuine issue of material fact that Mr. Blanco understood the legal nature and effect of the releases which he executed.

As to the nature of the medical advice available to Mr. Blanco at the time of the execution of the release, the affidavits and exhibits attached to the pleadings clearly indicate that the paintiff was fully apprised of the nature, status and effects of the injuries which he sustained as a result of the accident. Mr. Blanco executed the releases on April 21, 1969, almost two years after the injuries were sustained. He had been examined and treated by physicians on two separate occasions in Tampa and Jacksonville, Florida, in 1967, and had plastic surgery performed on his face in Caracas, Venezuela, in January 1969, only three months prior to the execution of the releases. With the benefit of all this medical treatment, Mr. Blanco cannot honestly assert that he was lacking in adequate medical advice at the time he executed the releases. Therefore, this Court holds that there is no genuine issue of material fact as to the sufficiency or adequacy of the medical advice available to Mr. Blanco at the time he signed the releases.

As to the adequacy of the consideration, it is uncontroverted that Mr. Raymos and Mr. Bostwick fully apprised the plaintiff of the countervailing economic considerations which militated against proceeding to trial: the costs of travel to the United States for the plaintiff, the living expenses incident to his sojourn here during the trial, as well as the lack of any assurance that a jury would render a verdict for more than $1,000.00. Under these circumstances, the plaintiff cannot seriously contend that he was overreached economically. His interests were fully and ably represented by two experienced members of The Florida Bar. Therefore, this Court further holds that there is no genuine issue of material fact as to the adequacy of the consideration amidst the various countervailing considerations presented to the plaintiff.

As a result of the foregoing analysis, it seems clear that the release in question was executed freely, without deception or coercion, and that it was made with a full understanding of the plaintiff's rights. The mere fact that the plaintiff was disappointed in the payment received after payment of attorneys' fees cannot alter the legal effect of the instrument involved.

This case seems to be controlled by the following language in *Sitchon v. American Export Lines, Inc.*, 113 F. 2d 830, 832 (2d Cir. 1940):

> "It is a different thing to uphold a settlement by a seaman in which the compensation paid for his injuries is adequate and the only advice he has received is that of the physician of the employer where, as here, he has the advice of his own doctor and lawyer whose only bias would probably be in his own favor. If such a settlement as the one in the case at bar is voidable, no release by a seaman could ever be free from attack, if he subsequently discovered that his injuries were greater than he anticipated when executing the release.
>
> "When a seaman has made a settlement after full investigation and with independent advice, we can see no ground for holding it invalid. The question in any case is whether the seaman, if he is acting alone, has intelligence enough fully to understand the situation and the risk he takes in giving up the right to prosecute his claim or whether, if he is acting under advice, that advice is disinterested and based on a reasonable investigation. Here the seaman and his attorney before making the settlement relied on two examinations by the Marine Hospital and the defendant made no separate examination. Each party entered into a settlement

based on identical information and conducted in the fairest manner."

In the case *sub judice*, the plaintiff was assisted by two independent attorneys and several doctors in deciding whether to sign the release.

It is well settled that unless there are circumstances showing that the seaman lacked a full appreciation of his rights, that he was under economic duress or was overreached in any respect, a release may not be set aside. *McBrien v. United States Petroleum Carriers, Inc.*, 177 F. Supp. 627 (S.D. N.Y. 1959). As the foregoing analysis has disclosed, the plaintiff's own statements belied his asserting that he did not fully appreciate the rights which he relinquished. In addition, the plaintiff's affidavits did not disclose the slightest taint of fraud, duress, coercion or overreaching.

This Court realizes that a "seaman" is a ward of the Court and defenses to a seaman's claim based upon a prior release or settlement must be looked upon with extreme care and scrutiny. It is also true that the defendant has the burden of showing that such defenses were fair and equitable to the seaman. *Garrett v. Moore-McCormack Co.*, 317 U. S. 239 (1942). Because of the independent legal and medical advice afforded the plaintiff, the defendants have met this burden. *See Sitchon v. American Export Lines, Inc.*, 113 F. 2d 830 (2d Cir. 1940); *McBrien v. United States Petroleum Carriers, Inc.*, 117 F. Supp. 627 (S.D. N.Y. 1959); *Corneaux v. Two-R Drilling Co.*, 236 F. Supp. 735 (E.D. La. 1964); *Flener v. Waterways Oil Company*, 261 F. Supp. 740 (W.D. Tenn. 1966). On the facts presented in the affidavits and exhibits, this Court concludes that there is no genuine issue of material fact as to the fairness and equitable nature of the release in

question and that a final summary judgment is proper. *Corneaux v. Two-R Drilling Co., supra; Hassan v. A. M. Landry & Son, Inc.*, 321 F. 2d. 570 (5th Cir. 1963), *cert. denied* 375 U. S. 967 (1964).

Therefore, it is

ORDERED:

The defendants' motion for final summary judgment is GRANTED.

DONE AND ORDERED at Ocala, Florida, this 22nd day of March, 1973.

/s/ CHARLES R. SCOTT
Judge

CC Gerald Sohn, Esquire
James F. Moseley, Esquire

APPENDIX "E"

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

No. 71-944-Civ-J-S

MAURO EVARISTO BLANCO,
Plaintiff,

v.

MORAN SHIPPING COMPANY and
SULPHUR CARRIERS CORPORATION,
Defendants.

Filed Ocala, Florida March 22, 1973

JUDGMENT ON DECISION BY THE COURT

It is

ORDERED AND ADJUDGED:

That the plaintiff take nothing, that this action be dismissed on the merits, and that the defendants Moran Shipping Company and Sulphur Carriers Corporation recover of the plaintiff Mauro Evaristo Blanco their costs of action.

DONE AND ORDERED at Ocala, Florida, this 22nd day of March, 1973.

/s/ CHARLES R. SCOTT
Judge

APPENDIX "F"

United States Court of Appeals
FOR THE FIFTH CIRCUIT

No. 73-2130

MAURO EVARISTO BLANCO,
Plaintiff-Appellant,

versus

MORAN SHIPPING COMPANY and
SULPHUR CARRIERS CORPORATION,
Defendants-Appellees.

Filed November 27, 1973

ON CONSIDERATION OF THE APPLICATION of the Appellees in the above numbered and entitled cause for a stay of the mandate of this Court therein, to enable Appellees to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, IT IS ORDERED that the issuance of the mandate of this Court in said cause be, and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court that certiorari petition has been filed. IT IS FURTHER ORDERED that the Clerk shall issue the mandate upon the

filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

/s/ CHARLES CLARK
UNITED STATES CIRCUIT JUDGE